



United States
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Service

Fruit and Vegetable Programs-PACA Branch

"PACA - Facilitating fair trade practices in the fruit and vegetable industry through education, mediation, arbitration, licensing and enforcement"

PACA Administrative Newsletter

Volume 1, Issue 1

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Welcome to the First Issue of PACA Newsletter

Special points of interest:

- On-Line Applying for and Renewal of Licenses Coming Soon
- PACA Internet Training Program
- Coming Industry Training Seminars
- PACA License Search Engine

Welcome to the premier issue of the PACA Program's administrative newsletter. This is the first of a series of newsletters whose purpose is to inform the fruit and vegetable industry as to their rights and responsibilities under the Perishable Agricultural Commodities Act.

The PACA program strives to provide various ways for members of the produce industry to learn about the requirements of the law, understand how the PACA can help them recover monetary damages, and advise which firms come under our jurisdiction. Currently, we provide outreach to the trade in the form of industry seminars, an on-line training program, articles on various topics, and information on our Web site.

It is my hope that you will find these articles informative and interesting. We have also included information on precedent cases, frequently asked questions, a schedule of coming

industry training seminars, and developments within the PACA program.

If there is anything that you would like to see presented in future issues, please contact us at our Web site or through one of the Branch offices listed in the Office Directory on page 4.

We plan to issue this newsletter quarterly. Thank you for giving us the opportunity to continue to serve you.

James R. Frazier, Chief

PACA Branch



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Battered and Coated Vegetables

A recent court ruling upheld the Perishable Agricultural Commodities Act classification of oil-blanching potato products used to make french fried potatoes as perishable agricultural commodities.

On June 7, 2004, a judge in the U.S. District Court for the Eastern District of Texas affirmed USDA's position that coated and battered fruits and vegetables were covered under the PACA, including PACA trust provisions. The case was a lawsuit brought against USDA by a wholesale food distributor involved in a bankruptcy proceeding.

The court also reiterated the original intent of the PACA when it was enacted by Congress, which is to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce. A major objective of the PACA program is to help ensure that dealers of fresh and frozen fruits and vegetables get what they pay for and get paid for what they sell, including when their customers go out of business, declare bankruptcy, or simply refuse to pay for the fruits and vegetables received. Litigation is not always a feasible option for shippers and growers

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Cooked french fries are not covered under the PACA

"...the PACA does not address nutritional issues, but is intended to protect the financial stability of fruit and vegetable growers..."

Battered and Coated Vegetables

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because fruits and vegetables are highly perishable and because buyers and sellers are often thousands of miles apart.

The June 7, 2004, court decision hinged on how, for the purposes of regulating fair trade between produce industry buyers and sellers, the PACA classifies raw potatoes as "perishable agricultural commodities" and, therefore, subject to the PACA regulations. On May 1, 2003, the PACA regulations were revised to extend coverage to include fresh and frozen fruits and vegetables that have been coated or battered.

According to the PACA definitions, the act of cutting, slicing, dicing, coating, battering, etc., does not change the character of a potato, any more than slicing a strawberry or an apple. Examples of other perishable commodities that may be cut, sliced, diced, and coated or battered for human consumption are okra,

cauliflower, broccoli, and squash. Once fully cooked, none of these commodities would be considered "fresh fruits or vegetables" and would not be covered commodities under the PACA.

In the June 7 case, the raw potatoes are blanched and lightly coated but not fully cooked and, under the PACA, are classified as perishable.

As you know, the bankruptcy of a major buyer of frozen potato products can impact the potato processor and in turn the potato farmers who are marketing their fresh potatoes through that processor.

The PACA classifications, such as "fresh," are not intended to be nutritional guidelines. Rather, they are intended to protect the financial stability of fruit and vegetable growers, buyers, and sellers in the marketing chain.

Fruit and Vegetable Industry Advisory Committee



The Fruit and Vegetable Industry Advisory Committee met July 13 and 14, 2004, and issued the following recommendations to the Secretary on issues related to the PACA:

- Consolidate license functions to one location; reduce field offices to three locations;
- Evaluate development of a national call center as an industry resource;
- Evaluate increasing the filing fee for informal and formal complaints;
- Increase industry outreach and web resources; and
- Evaluate the inclusion of a processing fee for single-year license renewals.

The PACA Working Group of the Committee continues to review the following issues:

- Electronic Data Interface (EDI) as it relates to a seller's ability to preserve its trust rights electronically when the buyer either refuses to accept, charges for, or otherwise hinders the acceptance of a seller's trust notice;
- Increasing the \$60 filing fee for informal complaints and \$300 handling fee for formal complaints.

Frequently Asked Questions About PACA Complaints

How do I file a PACA complaint?

Send us a letter stating that you want to file a complaint. In the letter, provide us with the name of the company and details of the transaction(s) involved. You should also enclose copies of any documents pertaining to the transactions along with the \$60 filing fee, payable by check or credit card. The complaint may be mailed to any of the PACA offices listed in our [office directory](#) on page 4.

I have a prospective new customer. How can I get information about the firm's PACA complaint history?

Call us toll-free at 800-495-7222 and we will provide you with general information about your prospective customer's

PACA complaint and license history.

I have an unpaid order. What is PACA doing to get the order paid?

When a PACA-licensed firm fails to pay an award, the USDA automatically suspends its license and the firm is prohibited from operating in the produce industry until the award is paid to your satisfaction. While the firm's license is suspended, the firm's officers are also restricted and cannot be employed or affiliated with any other PACA licensee without the consent of the Secretary of Agriculture. We monitor the activities of these firms and individuals, and may pursue further civil court actions if they operate in violation of the PACA restrictions.

You may also pursue the matter further and file a civil action in U.S. District Court to have the USDA award reduced to a court judgment. If the judgment is not satisfied, the court may penalize the firm, which could include an attachment of assets.

PACA Licenses

How do I obtain a PACA license?

See our Web address on page 4 to obtain a license application, then mail the completed application and license fees to the address shown on the top of the form. You may also call us toll-free at 800-495-7222 and we will assist you in completing an application over the phone.

What other licenses do I need?

We know of no other licenses with the USDA that are required for you to operate in the produce industry. Your state, county, and local governments, however, may require other licenses and we recommend that you contact them directly.

Since my new business has the same ownership as the old one, do I need a new license?

A new license is required if the new business is a separate legal entity conducting business subject to the PACA. Some examples include changing the firm's legal status from an individual owner to a partnership or a corporation, changing the number of general partners in a partnership, or re-incorporating in a different state.

The addition of a branch facility, an additional trade name, or the opening of an additional branch location does not require you to obtain a new license. If you ever question your need for an additional license, call us at 800-495-7222 and we will be glad to help you make the proper determination.

Terms of Sale: Open and Price After Sale

The trade terms Price After Sale (PAS) and OPEN are not defined under the PACA. These terms should be treated as sales with all terms fixed except for the price. They are not to be confused with consignments.

When the seller and buyer do not arrive at a settled price, the following procedures will be followed by USDA to determine a reasonable value for the product:

When the receiver provides a detailed account of sales, we will consider it as the best evidence of the value of the product, subject to proof that an accurate accounting has been provided. If the receiver does not provide an account of sales, USDA Market News Service quotes may be used as an alternate measure of establishing the fair market value of the product. In this situation, use the middle of the receiving Market News quotes for the date of arrival, less 20% as a reasonable figure for handling and profit to the buyer, less out-of-pocket expenses such as freight cost and inspection, to determine the "reasonable value."

"...PAS and OPEN are not defined under the PACA...should be treated as sales..."



Fruit and Vegetable Programs-PACA Branch

Our Web Address:
www.ams.usda.gov/fv/paca.htm

PACA On-Line Features

- PACA License Search Engine
Search for licensees by business name(s), principal(s), or branch/trade name
- Violators, persons under employment and licensing restrictions
- Internet Training Program
- Office Directory

Coming Soon in PACA

- Applying for and Renewal of Licenses On-Line

Coming Industry Training Seminars

Training seminars are held on your rights and responsibilities under the PACA at the USDA Fresh Products Branch National Inspector's Development and Training Center in Fredericksburg, VA, in conjunction with courses in introductory and advanced produce inspection.

Following are upcoming scheduled dates:

- March 14-18, 2005
- June 6-10, 2005
- August 22-26, 2005
- September 26-30, 2005

For more information, call us toll free at 877-622-4716.

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PACA Branch Office Directory

National Toll-Free Number:
800-495-7222

Washington, D.C.

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James R. Frazier, Chief	202-720-2272
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Trade Practices Section	202-720-6873
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